U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32566029

Date: AUG. 14, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability on behalf of the Beneficiary, a materials science & polymer researcher, *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Beneficiary satisfied at least three of the required initial evidentiary criteria, the Petitioner did not show that the Beneficiary enjoys sustained national or international acclaim and that he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics as demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of achievements in the field through a one-time

achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner filed this petition on May 22, 2023, and must established the Beneficiary's eligibility for this highly restrictive visa classification as of that date. 8 C.F.R. § 103.2(b)(1). The Petitioner is also acting as his own counsel in this matter, noting "[h]e is representing [the Beneficiary] in both his immigration matters and his personal/professional goals in the United States." In a personal statement, the Beneficiary discusses his employment plans should this petitioner be approved, indicating "[r]esearch positions in both [a]cademia and [i]ndustry are the scope of my career plan. Additionally, I plan to attend conferences [and] seminars and otherwise participate in the research community of the United States, sharing my own expertise as well as acquiring new skills and knowledge." In 2015, the Beneficiary obtained his doctoral degree in polymer science from a university abroad.

Because the Petitioner did not claim or establish that the Beneficiary has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Beneficiary met three of those criteria: judging (iv), scholarly articles (vi), and leading or critical role for organizations or establishments that have a distinguished reputation (viii). Based on our do novo review of the evidence submitted before the Director and the Petitioner's appeal brief, we agree with the Director that the Beneficiary has not met other criteria.

For instance, the Director determined that the Beneficiary did not meet the receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field under 8 C.F.R. § 204.5(h)(3)(i). They concluded, among other things, that the evidence provided about his awards was insufficient to show the national or international significance of the awards, and that excellence in the field of endeavor was the basis for granting them.

They observed that the Petitioner's [redacted] award was part of an annual competition put on by the city of [redacted] that involves conferring 50 awards in 22 categories, which are "awarded to a select group of [50 to 80] candidates each year." Other evidence in the record suggested that the competition for these awards is limited to Russian Federation citizens living, working, or attending schools in [redacted] The Petitioner acknowledged some of these competition limitations in his initial brief by sharing that the Beneficiary's specific "innovation award" involved "citizens of the Russian Federation living in [redacted] in the field of creating technical

innovations." The Director determined that the Petitioner's evidence fell short in demonstrating that this award was a nationally or internationally award for excellence in the field of endeavor.

On appeal the Petitioner generally asserts that the Director's conclusions in this regard "constitutes an incorrect application of facts," further alleging that in denying the petition, the Director "failed to make a rational connection between the facts of this case and the decision." However, the Petitioner does not support his appeal by specifically explaining how the Director misapplied the facts in determining that the evidence did not establish that the Beneficiary met this criterion. If the Petitioner does not explain the specific aspects of the decision that he considers to be incorrect, he has failed to meaningfully identify the reasons for taking an appeal. *See* 8 C.F.R. § 103.3(a)(1)(v). We agree with the Director that this criterion has not been met.[1]

The Director denied the petition, concluding the record did not show the Beneficiary warranted favorable consideration in a final merits determination based on the totality of the evidence. As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, that the Beneficiary enjoys sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119–20). *See generally* 6 *USCIS Policy Manual* B.2, https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification). In this matter, we determine that the Petitioner has not shown his eligibility. While we may not discuss every document submitted, we have reviewed and considered each one.

As a preliminary matter, the Petitioner asserts on appeal that the Director erred in concluding that the Beneficiary did not meet the contributions of major significance in the field criterion at 8 C.F.R. § 204.5(h)(3)(v). To satisfy the plain language of this criterion, a petitioner must establish that a beneficiary has not only made original contributions, but that those contributions have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35. However, for the sake of brevity we need not consider the Petitioner's assertions on appeal regarding whether the Beneficiary has met this criterion as the Director has already determined that he met three other alternate criteria. Rather, we will review the Petitioner's arguments raised on appeal about the significance of the Beneficiary's original scientific contributions to the field within the context of the final merits determination.

[1] We incorporate our determination that the record does not indicate the Beneficiary has garnered internationally recognized prizes and awards for excellence in the field into our final merits determination. We conclude that, without more, the awards evidence does little to support the Petitioner's contention that the Beneficiary is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The Petitioner contends on appeal, among other things, that the Director's evaluation of the evidence "overlooks the inherent value and recognition his work has already garnered within the scientific community," and asserts "the significant and practical applications of this research have been acknowledged by his peers, as evidenced by the citations and the adoption of his methodologies by others in the field." We have reviewed the Petitioner's initial submission, his response and additional documentation from the Director's notice of intent to deny the petition (NOID), the Director's decision, and the Petitioner's appeal brief. For the following reasons, we conclude the decision reflects the Director thoroughly reviewed the record and correctly and sufficiently articulated reasons why the Petitioner's evidence and assertions of eligibility fell short in demonstrating that the Beneficiary meets the requirements for classification as an individual with extraordinary ability in the sciences.

The Director addressed the impact of the Beneficiary's published research on the field in the denial, discussing some of the letters submitted by others in the field commenting on the significance of the Beneficiary's research findings. For example, they took note of a letter from Dr. D- who stated that the Beneficiary was the first author of two research papers but observed the citation record evidence indicated that these research papers had only garnered 28 citations since 2019. Other authors also wrote letters in support of the petition speaking highly of the Beneficiary and his work in the field, but the Director concluded that they did not individually or collectively explain how his research has been used or cited in a manner that demonstrates his published work has remarkably impacted or significantly influenced the field.

The Director noted that much of the evidence in the record highlights the potential future growth of the Beneficiary's work, but it does not establish that at the time of filing the petition the Beneficiary had made original contributions of major significance to the field. The Director informed the Petitioner that eligibility for the benefits sought in this petition cannot be based on the expectation of the future significance of the Beneficiary's work. They cited to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications *as of the filing date of the visa petition*. On appeal, the Petitioner suggests:

> The standard set by *Matter of Katigbak* should be applied with an understanding that significance in scientific research often manifests through incremental advances that collectively represent major contributions. To this extent, the [B]eneficiary's work has been foundational for subsequent research.

It appears that the Petitioner is asking us to ignore the regulatory requirement at 8 C.F.R. § 103.2(b)(1) which requires that the Petitioner must demonstrate that at the time of filing the petition, the Beneficiary met the statutory and regulatory requirements for classification as an individual of extraordinary ability. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3). He suggests that the Beneficiary can establish his eligibility through research findings that will "manifest" original contributions of major significance through collective incremental advances to the field at some unknown time in the future.

We lack the authority to waive or disregard any of the Act's requirements, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695 (1974) ("So long as this regulation is extant

it has the force of law."). Immigration regulations carry the force and effect of law. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954). Therefore, we cannot "credit" the Beneficiary with unrealized accomplishments that may at some future point in time come to fruition and establish his eligibility. We agree with the Director that many of the reference letters discuss his scientific accomplishments as if they may someday significantly impact or influence the field, but not that they already constitute such documented achievements, and as such they are of little probative value to the matter here. *Matter of Chawathe*, 25 I&N Dec. at 376.

The Director observed in discussing the significance of the Beneficiary's published work that the Petitioner provided comparative data about the Beneficiary's citation record that limited the analysis of the significance of his work relative to the work of other researchers in the Russian Federation, while scientists conducting research in the field located beyond the Russian Federation's borders have published scholarly works accruing hundreds of citations that far exceeded the Petitioner's own citation record. They noted that the Beneficiary's highest cited paper only garnered 60 citations since 2015 and concluded that the magnitude of the Beneficiary's citation record did not substantiate the Petitioner's assertions that in the field of materials and polymer science, he "has made a major impact and received sustained national and international acclaim."

On appeal, the Petitioner contends: The [B]eneficiary's citation count, especially within a specialized niche of materials and polymer science, is indicative of the influence his research has in the field. Citation metrics should be contextualized within the field's size and the nature of the work. . ." On appeal, the Petitioner seems to suggest that the Beneficiary's citation record should be considered in the context of a *specialized niche of materials and polymer science.* In response to the Director's notice of intent to deny (NOID) the petition, the Petitioner claimed:

> Most of the works published by [the Beneficiary] in the field of materials science dealt with the implementation of supercritical carbon dioxide, the study of aerogels and hydrophobic coatings. To highlight that this is not a *niche* area, but a broad and established domain, we point to a total number of articles published worldwide on the matter being 37,497. (*Emphasis added.*)

The Petitioner asserts that the Beneficiary's 46 scholarly articles have been influential, highlighting that at the time of filing the petition, his work had garnered 443 citations. On appeal, the Petitioner states that the Beneficiary's research interests are in a *specialized niche* within the materials and polymer science field. In contrast, in the NOID response the Petitioner indicated that the Beneficiary's research was *not in a niche*, but in a "broad and established domain" in which no less than 37,497 scholarly articles had been published worldwide.

While the Petitioner suggests on appeal that we should review the significance of the Beneficiary's research findings within a new, narrower context other than that considered by the Director in denying the petition, he does not provide evidence or narrative justifications for doing so. The Petitioner has not furnished new data or pointed to previously submitted circulation statistics on appeal to distinguish between the Beneficiary's asserted influence in a newly claimed research *niche* as opposed to the general materials and polymer science domain which encompasses an immense body of scholarly articles. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. We conclude the Petitioner did

not meet his burden by submitting evidence sufficient to show that the Beneficiary's authorships and overall publication record favorably compares to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. 101-723 at 59, section 203(b)(1)(A)(i) of the Act, and 8 C.F.R. § 204.5(h)(3).

In the denial, the Director acknowledged that the Petitioner had submitted evidence of the Beneficiary's five patents and took note that each patent lists multiple inventors and the Beneficiary's former employer abroad. They did not question the importance of the Petitioner's work for his employer but noted that researchers are expected to develop and design innovations for their employers, whose intellectual property is protected by patents. The Director determined that this evidence showed the Beneficiary to be a productive member of his employer's research teams, but the evidence provided about the patents was insufficient to demonstrate the major significance of the Beneficiary's original contributions to the field.

While patents constitute evidence of originality, they do not necessarily show major significance in the field if they have not been utilized. In response to the NOID, the Petitioner submitted a letter from [redacted] (S-) in which he discussed the Beneficiary's role in a project that made use of some of the patented technologies that he co-invented. S- discussed the seed funding that the project received and indicated that the project was chosen for its innovative solution to the global textile market's wastewater issue, reflecting a major environmental and technological challenge. S- opines on the Beneficiary's contributions to this project which led "to the creation of a full-scale industrial prototype," but he does not discuss how this patented technology significantly influenced advances in the field.

The record also contains an undated letter from [redacted] Ph.d (Y-) who indicates that he is employed by a university in Kazakhstan, whose "mission is to foster advancements in science and technology. . ." In the NOID response, the Petitioner references this letter as "evidence that [Y-'s university] is highly interested in the [B]eneficiary's contributions to the field, including the supercritical CO2 technology fabricated by [the Beneficiary] and his development of aerogels for water purification." Y- indicates in the letter that his university is interested in the Beneficiary's technologies, and notes that his institution is "in the final stage of negotiations with [the Beneficiary] to facilitate the licensing of [his] technologies for use in Kazakhstan." It is not apparent from this undated letter when it was written, whether the application of this water purification technology has advanced beyond the prototype project discussed by S- in his letter, or that this technology has been licensed by Y-'s institution for widespread use in Kazakhstan.

On appeal, the Petitioner reiterates that the Beneficiary is listed as an inventor on five patents "that are currently being used in the field," but does not offer evidence or narrative to provide further insight into the significance of the Petitioner's patented works. We conclude that the record does not reflect that this prototype has been widely adopted for use by textile companies, or that this wastewater solution has had marked influence in the field. While the Petitioner asserts on appeal that his patented works are being used by others, he has not shown that the Beneficiary through his patented works has significantly impacted the field or otherwise indicates that he enjoys sustained national or international acclaim.

Turning to the Petitioner's argument on appeal that the Director "overlooked" the international recognition that the Beneficiary engendered through performing peer reviews of the work of others, the

Petitioner asserts on appeal that "the role of the Beneficiary's peer reviews extends beyond routine contributions." While he generally asserts that the Director "overlooked" evidence regarding his peer review work, he does not explain the specific aspects of the decision that he considers to be incorrect in the Director's discussion of this material. For instance, he does not point to any document in the record that the Director ignored, nor does he further explain how the peer review evidence in the record demonstrates the Beneficiary's peer review work is "international[ly] recognized" beyond the routine contributions performed by other peer reviewers in the field. As in this case, it is insufficient for an appellant to merely assert that it doesn't agree with a denial decision or that the preceding authority made an improper determination. If the Petitioner does not explain the specific aspects of the decision that he considers to be incorrect, he has failed to meaningfully identify the reasons for taking an appeal. To review the appeal, it would therefore be necessary to search through the record and speculate on what possible errors the Petitioner claims. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986). We decline to do so here.

The Petitioner also contests the Director's determination that the Beneficiary's leading or critical roles performed while employed at academic and research institutions abroad do not adequately support his claim that that the Beneficiary is an individual of extraordinary ability. In denying the petition, the Director concluded that the Beneficiary met the plain language of the leading or critical role for organizations or establishments that have a distinguished reputation at C.F.R. § 204.5(h)(3)(viii). We will not discuss or disturb their affirmative alternate criterion determination. However, based on our de novo review of the evidence regarding the leading or critical nature of the work the Beneficiary performed abroad, we conclude that it falls short in establishing that he is one of that small percentage of individuals who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The Petitioner has provided evidence of the Beneficiary's roles and responsibilities performed at a research institution (I-) and at a company that the Beneficiary helped found (S-C-). According to the letters provided by Beneficiary's Ph.D. advisor, who is also the head of a laboratory at I-, the Beneficiary was one of the principal investigators on a project focusing on colloidal and dispersed systems in supercritical carbon dioxide. He noted that the Beneficiary was charged with the formulation of the general project idea and of preparing the successful grant application for this project. The advisor states that during the project, the Beneficiary developed a new approach to the synthesis of metal oxide aerogels. He was involved in the project "polymers of the future" in which the advisor was head investigator. One of the Beneficiary's roles was to draft a successful project proposal to further the research. The advisor also explains that the Beneficiary's role involved carrying out the scientific leadership of the research team, which included members holding Ph.Ds. in a variety of scientific specialties, a doctoral student and undergraduate students.

As stated in the advisor's letters, the Beneficiary's responsibilities included the setting of scientific goals, the development of a research plan and control over the implementation of these studies. His tasks included writing the first drafts of scientific articles, editing articles, and communicating with publishers and publish articles. The advisor opined that the Beneficiary's role in this project was undoubtedly critical, and the Beneficiary was involved in research projects at I- for seven years (2015 to 2022), which "indicates a sustained contribution to the scientific community within this institution." The advisor asserts that through the work the Beneficiary performed, particularly while involved with the polymers of the future project - which was backed by the Russian Ministry of Science and Education - "he played an indispensable role in shaping I-'s scientific trajectory."

We do not doubt that the Beneficiary is a talented scientist who performed important work during his tenure at I-. It is also apparent that his advisor and the authors of other letters who discuss his accomplishments at I- hold him in high regard. However, collectively considering the evidence in the record about his research activities while employed there, we conclude that the Petitioner has not presented contemporaneous, documentary evidence sufficient to distinguish how the Beneficiary's roles and responsibilities differentiated from that of his post-doctoral peers managing other research projects either at I- or at other research institutions conducting research projects in the materials and polymer science field. The departments, divisions, and large research projects within research organizations all have managers or individuals in similar positions to manage or oversee their research work, but the Petitioner has not shown how the Beneficiary, through his role at I-, garnered sustained national or international recognition or acclaim.

The Beneficiary's advisor also discusses the significance of his CTO role at S-C-, a technological startup, "that was created to transfer technology from [I-] into the market." His advisor references the same project that [redacted] (S-) discussed in his letter involving innovative solution to the global textile market's wastewater issue, which we addressed above in discussing the lack of sufficient evidence to establish the major significance of the Beneficiary's original patented technologies. The advisor indicates that the Beneficiary performed a leading role in S-C- to bring this technology to market as he "was responsible for overseeing all technological aspects of the startup," and "led the company's strategic direction in terms of technology, research and development while also managing the engineering team." S- also opined on the Beneficiary's contributions to this project which led "to the creation of a full-scale industrial prototype," but neither S- nor the Beneficiary's advisor adequately discuss how this patented technology has significantly influenced water purification advances in the field.

We incorporate our previous discussion about the lack of sufficient evidence that the scholarly articles and patented technologies that the Beneficiary focused on during this tenure at I- and S-C- are indicative of his being "one of the top scientists in his field" as the Petitioner contends on appeal. While there is little doubt that the Beneficiary made important contributions to these institutions while employed there, the Petitioner has not shown that the Beneficiary's roles performed there are indicative of his standing as one of the small percentage of individuals who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Based on our de novo review of the evidence and the Director's decision we conclude that the Director thoroughly examined and considered the submitted documentation; he discussed various aspects of the evidence individually, but collectively considered the entire record to ultimately determine that the Beneficiary is not an individual of extraordinary ability. To determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe, supra*. While the Petitioner may disagree with aspects of the Director's analysis of the evidence, he has not sufficiently demonstrated that the Director neglected to collectively consider the record under the preponderance of the evidence standard, or that he otherwise erred as a matter of law or policy in denying the petition.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown the Beneficiary's work is indicative of the required sustained national or international acclaim or is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. The record does not contain sufficient evidence establishing the Beneficiary among the upper echelon in his field.

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.